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No. 469

IN THE

Supreme Court of the United States

OCTOBER TERM 1936

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF AMERICAN FEDERATION OF LABOR *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, *AMICI CURIAE*

CHARLTON OGBURN,
Counsel for Amici Curiae.

ARTHUR E. REYMAN,
Of Counsel.

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BRIEF OF AMICI CURIAE

The Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, an unincorporated association, represents to this Honorable Court that it is an international labor union consisting of division associations comprising motormen and conductors and other workers operating cars and trains, and bus and coach operators, garage men and other workers engaged in the electric railway and motor coach industry in the United States and Canada. It is affiliated with the American Federation of Labor.

The American Federation of Labor represents to this Honorable Court that it is a federation of national and international trade and labor unions and State and central labor bodies.

Members of both the Amalgamated Association and the American Federation of Labor are vitally interested in the legal questions involved in this case, and by reason thereof they respectfully ask permission to file this brief as *amici curiae* in support of the constitutionality of the National Labor Relations Act.

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Fourth Circuit is reported in 85 Fed. (2d) 990.

STATEMENT

(a) Statute Involved

This case came before the Circuit Court of Appeals upon the petition of the National Labor Relations Board for the enforcement of an order issued by the Board pursuant to Section 10 of the National Labor Relations Act (July 5, 1935, c. 372, s. 16, 49 Stat. 449; 29 U. S. C., s. 151-166).

The Act creates a National Labor Relations Board and provides administrative and court procedure for the prevention of certain "unfair labor practices affecting commerce" (Section 10(a)). The Act defines "commerce" to mean:

> "trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia * * * and any State * * *, or within the District of Columbia * * *." (Section 2(6))

The term "affecting commerce" is defined to mean:

> "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." (Section 2(7))

Section 7 provides that

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Section 8 defines five unfair labor practices on the part of employers, two of which are here involved:

> "(1) To interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7."

> "(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

The Board, under the authority vested in it by Section 6 of the Act, issued its general rules and regulations on September 14, 1935, and these rules as amended April 27, 1936, set out the procedure through which cases arising under the Act are dealt with by the Board.

The case at bar is concerned only with protection to the self-organization of employes as guaranteed in Section 8(1) and (3) of the Act. Issues relating to majority rule, or the "company union", so-called, or refusal of the employer to bargain collectively, which might arise out of the other unfair labor practices enumerated in Section 8, are not here involved.*

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* All of the provisions of the Act are not included in the present controversy. In the Act (Section 15) is the usual separability clause, which, we will assume, this Court will accord full effect.

(b) Proceedings of the Board in This Case

On March 5, 1936, Local Division 1079 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America (hereinafter called "the union") filed charges under the Act that its employer, the Washington, Virginia & Maryland Coach Company (hereinafter called "petitioner") had violated the Act in that it had engaged in unfair labor practices within the meaning of subsections (1) and (3) of Section 8 thereof by discharging and refusing to reinstate some twenty employes because of their membership and activity in the union. The Board thereafter issued a formal complaint and notice of hearing, stating the charges, and hearings before the Board were had pursuant to the provisions of the Act.

(c) The Board's Findings of Fact

At the hearings conducted before duly constituted Trial Examiners of the Board, evidence was offered to sustain the allegations of the complaint based on the charge. The petitioner appeared and objected to the jurisdiction of the Board and asked that the complaint be dismissed on constitutional grounds; its motion being denied, the petitioner, without waiving its constitutional objections, filed an answer to the complaint and offered testimony in opposition. The Board found that the employes had been discharged in violation of the provisions of Section 8, subsections (1) and (3) of the Act; that in its business the petitioner was engaged in interstate commerce between the District of Columbia and the States of Maryland and Virginia; and that its conduct in discharging its employes burdens and obstructs interstate commerce and has led and tends to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

The facts, the proceedings before the Board, and the Board's findings of fact are more fully set out in its brief filed herein.

ARGUMENT

I

The Board's Findings of Fact Are Fully Supported by the Evidence; and Under the Facts So Found Petitioner Has Engaged in and Is Engaging in Unfair Labor Practices Affecting Commerce.

Section 10(e) of the Act provides that the findings of the Board as to facts, if supported by evidence, shall be conclusive.

It is firmly established by the decisions of this Court that, in reviewing findings of the Federal Trade Commission, a court will not consider the testimony anew and make its own findings, since the weight to be given to the evidence and the inferences to be drawn therefrom are matters for the Commission, the fact-finding body;—the function of the courts is to review the Commission's findings and to reverse or modify only if those findings are clearly improper and there is no evidence to support them. *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Helvering* v. *Rankin*, 295 U. S. 123, 131. The provisions of Section 10(e), as stated above, are almost identical with provisions of Section 5 of the Federal Trade Commission Act* (15 U. S. C., s. 45); and the functions of the National Labor Relations Board are analogous to those of the Federal Trade Commission.

The duty of weighing conflicting evidence, the weight to be given to the facts and circumstances admitted, and the inferences reasonably to be drawn from them, are matters for the National Labor Relations Board created by Congress for that purpose. *Federal Trade Commission* v. *Pacific States Paper Trade Ass'n,*, 273 U. S. 52, 63; *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568. (See

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* 38 Stat. 717; 15 U. S. C., s. 41-51.

also *Federal Radio Commission* v. *Nelson Bros. B. & M. Co.*, 289 U. S. 266, and cases cited on p. 277.) We are confident that this Court will consider that the Board competently judged all of the evidence and made proper findings based thereon.

II

The Act in General with Respect to Power of Congress to Regulate Commerce

The power vested in Congress to regulate interstate commerce has been too often considered by this Court to require an extended discussion here of the extents and limits of that power (*Gibbons* v. *Ogden*, 9 Wheat. 1; *Swift & Co.* v. *United States*, 196 U. S. 375; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1); and that this power includes the regulation of the agencies of interstate transportation is also well settled. *Second Employers' Liability Cases*, 223 U. S. 1; *Minnesota Rate Cases*, 230 U. S. 352; *Houston E. & W. T. R.* v. *United States*, 234 U. S. 342; *Dayton-Goose Creek R.* v. *United States*, 263 U. S. 456; *Florida* v. *United States*, 292 U. S. 1.

The National Labor Relations Act does not apply to all employers and employes. It is clearly apparent that Congress intended that each case arising under the Act with respect to the unfair labor practices arising thereunder should be considered on its own facts. The Board's authority cannot extend beyond the prevention of those unfair labor practices "affecting commerce"—that is,

> "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The power conferred upon the Board, however, is as extensive as the power of Congress under the commerce clause.

Petitioner operates an interstate transportation system. In a leading case the Court noticed the interruption to interstate commerce arising through a strike and exerted its power to lift that obstruction to interstate commerce. *In re Debs*, 158 U. S. 564. In other cases the Court has taken note of interruptions to interstate commerce even though no agency of interstate transportation was directly involved, and exercised its inherent power to remove such obstructions. *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Ass'n.*, 274 U. S. 37.

The findings of Congress with respect to the effect of strikes and lockouts on commerce are incorporated into the Act in Section 1 thereof and, unless upon the basis of fact these findings of Congress are unreasonable and arbitrary, the Court will accept them. In *Stafford* v. *Wallace*, 258 U. S. 495, the Court recognized that it is primarily for Congress to consider the causes of threats and obstructions to interstate commerce, and the Court said that it would not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it were clearly non-existent.

As above stated, this case is concerned only with the application of the Act to the transportation system of the petitioner.

The petitioner has asserted in the court below that "the primary and fundamental purpose of the present Act is to accomplish compulsory collective bargaining". This assertion completely overlooks the distinction between the right to organize and bargain collectively (which is the only issue involved in this case), and the facts constituting a refusal by the employer to bargain collectively, an issue not before the Court at all. A similar argument on behalf of the railroad in *Texas & New Orleans R. R.* v. *Brotherhood*, 281 U. S. 548, was rejected. The Court there observed that the pro-

hibition by Congress of interference with the selection of representatives, instead of being an invasion of a constitutional right, was a recognition of the right to select representatives for the purpose of collective bargaining.

If collective bargaining, as a means of removing obstructions from interstate commerce, is to be substituted for strikes in settling wages and working conditions, and if Congress is to assure the basis for collective bargaining by providing that each side is to be safeguarded in selecting its representatives for these negotations, free from interference from the other side, then the *sine qua non* is that the employer must not be allowed to coerce the organization of the employes and the selection of its representatives by discharging those employes who are active in forming or directing this organization, for no reason other than this activity. If such employes can be discharged for union activity with impunity, the law which requires that an employer engaged in interstate commerce must not interfere with the union of his employes becomes a farce.

The National Labor Relations Act, in its general scope and aim is, we submit, within the power conferred by the commerce clause of the Constitution. *Texas & New Orleans R. R.* v. *Brotherhood of Railway Clerks, supra,* is squarely in point on all of the issues in this case and conclusively affirms the power of Congress to regulate commerce to the extent and in the manner provided for in the National Labor Relations Act.

III

Texas & New Orleans R. R. v. Brotherhood Is Controlling in Instant Case

(a) THE ACT IS A VALID EXERCISE OF THE POWER OF CONGRESS TO REGULATE COMMERCE

This case concerns only the application of the National Labor Relations Act to the interstate transportation system operated by petitioner. This discussion of the application

of the Act will be confined, therefore, to whether or not it is effective as applied to such a transportation system.

The National Labor Relations Act extends to other industries which are engaged in interstate commerce the same prohibition against interference by an employer with the right of employes to organize and bargain collectively as the Railway Labor Act does to the railroads. Congress has found, and has so stated in Section 1 of the Act, that the

> "denial of employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial strife or unrest which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety or operation of the instrumentalities of commerce; (b) occurring in the current of commerce • • •"

Unless Congress has made a mistake in factual findings the National Labor Relations Act must have direct applicability to the petitioner's business.

Not the National Industrial Recovery Act, but the Railway Labor Act and its predecessors and the principles of the National War Labor Board, of which Chief Justice Taft was Chairman, are the historical predecessors of the National Labor Relations Act. The Railway Labor Act of 1926 as amended (44 Stat. 577; 48 Stat. 1185) was dealt with in *Texas & New Orleans R. R.* v. *Brotherhood of Railway Clerks, supra;* and on the relatively narrow issue before this Court in the case at bar the *Texas & New Orleans* case is conclusive.

More than fifty years ago Congress began a consideration of legislation for the settlement of labor disputes on the railways and in 1888 enacted a law for the voluntary arbitration of railway labor disputes (25 Stat. 501). Ten years later Congress supplanted this with the Erdman Act (30 Stat. 424), which provided for governmental mediation and for voluntary arbitration. The Newlands Act in July, 1913

(38 Stat. 103) created a permanent board of mediation on the railways. In 1916 the Adamson Act (39 Stat. 721) was passed, establishing an eight-hour day for train operators. The Transportation Act of 1920 followed, and under Title III (41 Stat. 469) there was created the Railroad Labor Board with power to hear and decide disputes and provide for self-organization and collective bargaining by employes. These provisions were sustained by this Court in *Pennsylvania R. R.* v. *United States R. R. Labor Board*, 261 U. S. 72 (1923), and in *Pennsylvania Federation* v. *Pennsylvania R. R.*, 267 U. S. 203 (1925). The Railway Labor Act of 1926 (44 Stat. 577) supplanted Title III of the Transportation Act of 1920 and as amended by Congress June 21, 1934 (48 Stat. 1185) and April 10, 1936 is now the law which prohibits the railroads from interfering with the right of employes to organize and has constituted a model for the National Labor Relations Act.

The Railway Labor Act sets up the National Mediation Board to assist in the settlement of labor disputes through mediation, provides for the enforcement of awards in voluntary arbitration proceedings between parties to disputes, and authorizes the establishment of adjustment boards through voluntary agreement for the purpose of interpreting and applying agreements made by the parties. That Act establishes the same principles* of protection to the right of self-organization and collective bargaining that Congress has now incorporated into the National Labor Relations Act; and those principles are the groundwork of the whole scheme of arbitration and mediation set up by that Act. To insure effective dealing by workers through repre-

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* Since the decision of this Court in the *Texas & New Orleans* case the right of self-organization and collective bargaining has been embodied in the Norris-LaGuardia Anti-Injunction Act (40 Stat. 20; 29 U. S. C., s. 102); the Bankruptcy Amendments of 1933 (47 Stat. 1481) and 1934 (48 Stat. 922; 11 U. S. C., s. 207(l)(m)); the Act for the Coordination of Interstate Railroad Transportation (48 Stat. 214; 49 U. S. C., s. 257(e)); and in the Railway Labor Act Amendments of 1934.

sentatives and to make the representatives truly representative, that Act (Section 2 (3)) provides:

> "Representatives for the purposes of this Act shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

In the *Texas & New Orleans* case the Brotherhood of Railway and Steamship Clerks, comprising ticket sellers, baggagemen, train despatchers and similar clerical employes, brought suit in the United States District Court to enjoin the Texas & New Orleans Railroad from violating the Railway Labor Act of 1926, alleging that the railroad had interfered with and coerced employes in their self-organization and had established by this means an association of its employes with which it purported to deal in the place of the Brotherhood, in violation of the above quoted part of Section 2 of the Act. The Circuit Court of Appeals affirmed the decree of the District Court granting a permanent injunction against the railroad, and on appeal this Court affirmed the decree below and found the railroad guilty of contempt for failure to comply with a preliminary injunction.

This Court unanimously upheld the validity of the Railway Labor Act under the commerce power. The right of Congress to guarantee freedom of organization, to prohibit the company-dominated union and to prevent employers from requiring membership or non-membership in any union, was completely sustained. The decree of the District Court so affirmed had provided (1) that the company union be disestablished; (2) that the Brotherhood be reinstated as representative until the employes by secret ballot should make a choice; and (3) that certain employes who had been discharged for their activities in behalf of the Brotherhood

should be restored to service. The present Chief Justice wrote in the opinion in that case:

> "We entertain no doubt of the constitutional authority of Congress to enact the prohibition. The power to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*County of Mobile* v. *Kimball*, 102 U. S. 691, 696, 697); to 'foster, protect, control and restrain' (*Second Employers' Liability Cases*, 223 U. S. 1, 47). Exercising this authority, Congress may facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation. In shaping its legislation to this end, Congress was entitled to take cognizance of actual conditions and to address itself to practicable measures. The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice. Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both." (281 U. S. 548, 570)

The principles therein enunciated were subsequently reaffirmed in *Railroad Retirement Board* v. *Alton*, 295 U. S. 330, 369, 377.

A comparison of the *Texas & New Orleans* case with the case now before the Court for determination cannot but show, we feel, that the decided case is controlling and final on the issues here involved. The duties of the employes of the petitioner are as directly connected with actual interstate movement of commerce as those employes involved in the *Texas & New Orleans* case—here they are bus drivers, repairmen and garage helpers; there they were baggagemen, ticket sellers, train despatchers and other clerical employes. The essence of the statutory provisions in each case is the prohibition of interference or coercion in self-organization and the selection of representatives. Then, too, the businesses subjected to the regulation of these statutes are so nearly the same as to make it practically impossible to find a distinction between them so far as their activities in commerce are concerned.

The tremendous growth of the motor transportation industry during the last few years has developed a network of freight and passenger lines reaching into almost every community in the country. Motor trucks and motor buses, as agents of interstate transportation, seriously compete with the railroads. That such competition should not work too adversely to the railroads, the Interstate Commerce Commission in recent months exerted its authority to lower passenger rates on railroads. Federal regulation of the motor transportation industry, under the Motor Carrier Act, will be an accomplished fact within the next few months. The Interstate Commerce Commission is now engaged in setting up an elaborate system of regulation under that Act.*

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* Before this Act was passed and while it was being considered by Congress, it was explained on the floor of the Senate that provisions in the Motor Carrier Act for protection to employes in self-organization and collective bargaining were made unnecessary because the National Labor Relations Act would cover the field of motor transportation and would make the inclusion of special provisions with respect to self-organization and collective bargaining unnecessary in the Motor Carrier Act (Congr. Record, 74th Congress, 1st Session, Vol. 79, p. 5887).

The intent of the law-making body to protect, safeguard and promote the free flow of commerce through the agencies of interstate transportation is apparent on the face of the National Labor Relations Act. The power to accomplish this intent by encouraging amicable adjustments of disputes through guaranteeing to employes in interstate transportation the right of self-organization and collective bargaining is conclusively affirmed by the *Texas & New Orleans* case.

(b) THE ACT DOES NOT CONTRAVENE THE FIFTH AMENDMENT

Again on the issue of due process, on the facts of this case *Texas & New Orleans R. R.* v. *Brotherhood, supra,* is controlling. We will not advert again to the facts in that case, which we have discussed above, nor to the striking similarity of those facts and the statutory provisions involved to those in the instant case. Suffice it to say that this Court in the *Texas & New Orleans* case recognized that the right of self-organization belonging to employes has long been accepted; and that a law looking to its protection is a valid exercise of the commerce power by Congress when applied to agencies of interstate transportation. The Court referred with approval to *American Steel Foundries* v. *Tri-City Central Trades Council, supra,* in which Chief Justice Taft wrote:

> "They [labor unions] were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what

> they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court."

The Court said, too, in the *Texas & New Orleans* case, that "the prohibition by Congress of interference with the selection of representatives * * *, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both." Thus, any argument to the effect that this Act is violative of the Fifth Amendment in that it interferes with the private right of contract must fail.

We note that the petitioner in its briefs in the court below asserts that the Railway Labor Act of 1926, which was before the Court in the *Texas & New Orleans* case, provided for a voluntary submission to arbitration by both parties, that is, by the railroad and its employes. The petitioner relies on a discussion by the Court beginning on page 564 of that opinion (281 U. S.) where the Court discusses those provisions of that Act with respect to voluntary arbitration as opposed to a system of compulsory arbitration, but that decision says in that very same paragraph that "Congress buttressed this policy by creating certain definite legal obligations." The argument that the general discussion of the arbitration provisions of the Railway Labor Act has any bearing on Section 2 (3) thereof is specious indeed. There is nothing in the National Labor Relations Act which prevents voluntary submission to arbitration of any dispute between the parties.

The principles on the issue of due process enunciated in the *Texas & New Orleans* case are consistent with those general principles laid down from time to time by this Court. The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases; the Fifth Amendment does not prohibit government for the public welfare, but merely conditions the exertion of the admitted power by requiring that the means selected be not

unreasonable, arbitrary or capricious and that they have a real and substantial relation to the object sought to be attained. *Nebbia* v. *New York*, 291 U. S. 502. These principles are the basis for many laws affecting the employer-employe relationship which have withstood attacks made upon them based on the due process clause. Numerous instances where valid regulation has restricted the right of contract are noted in *Nebbia* v. *New York, supra*, Note 25. The National Labor Relations Act affects the employment relation to a lesser degree than do many of the regulations upheld in the cases therein noted. (See, for example, laws upheld in *Holden* v. *Hardy*, 169 U. S. 366; *Bunting* v. *Oregon*, 243 U. S. 426; *Patterson* v. *The Eudora*, 190 U. S. 169; *New York C. R. Co.* v. *White*, 243 U. S. 188.

(c) THE ACT DOES NOT CONTRAVENE THE SEVENTH AMENDMENT

Then, too, the *Texas & New Orleans* case decisively overrules the objection that the right of trial by jury has been denied to the petitioner with respect to the order for reinstatement with back pay authorized by Section 10(c) of the National Labor Relations Act. In the *Texas & New Orleans* case the order under the Railway Labor Act required reinstatement with back pay of three workers discriminated against and discharged in violation of law. This part of the order was upheld as not having exceeded proper enforcement of the Act.

In the case at bar the terms of the order are practically the same as those of the decree, except for the number of workers discharged. The Board's order requires the petitioner to "make whole" the employes discharged for the wages lost through their discharge in violation of the Act.

The enforcement provisions of this Act were unknown at common law. The terms of the order to cease and desist and make whole the employes by affirmative action are equitable in nature. *Pennsylvania Federation* v. *Pennsylvania R. R.*, 267 U. S. 203; *Block* v. *Hirsh*, 256 U. S. 135; *Barton* v. *Bar-*

bour, 104 U. S. 126. See also *Shields* v. *Thomas*, 59 U. S. 253, in which, of the constitutional provision "that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved", it was said:

> "This provision, correctly interpreted, cannot be made to embrace the established, exclusive jurisdiction of courts of equity, nor that which they have exercised as concurrent with courts of law; but should be understood as limited to rights and remedies peculiarly legal in their nature, and such as it was proper to assert in courts of law, and by the appropriate modes and proceedings of courts of law."

(d) ADAIR V. UNITED STATES, 208 U. S. 161, COPPAGE V. KANSAS, 236 U. S. 1, AND CARTER V. CARTER COAL CO., 298 U. S. 238, ARE INAPPLICABLE TO THE CASE AT BAR.

The court below considered the argument but refused to concede that any of these three cases have any weight with respect to the issues in the present case.

The *Texas & New Orleans* case rejected as inapplicable *Adair* v. *United States*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1, the Court saying:

> "The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds."

If the *Adair* and the *Coppage* cases were inapplicable in the *Texas & New Orleans* case, they are equally inapplicable in the instant case. Those cases held invalid, on grounds of

due process, a law making it a criminal offense to discharge employes because of membership in a labor organization and another law making it a criminal offense to require as a condition of employment that employes refrain from such membership. As expressly stated in the *Texas & New Orleans* case, those two decisions have no force with respect to the question involved here.

Carter v. *Carter Coal Co., et al.*, 298 U. S. 238, is not in point here. There this Court has said that "commerce" is the equivalent of the phrase "intercourse for the purpose of trade", and that the mining of coal does not constitute such intercourse. But will the Court say that the transportation of freight and passengers and mail in interstate commerce by motor bus does not constitute such intercourse? Plainly, the Bituminous Coal Conservation Act of 1935* involved in the *Carter Coal Company* case was different in theory and application from the Act here under discussion. The "primary contemplation" of the former Act is stabilization of the industry through the regulation of labor and the regulation of prices; the primary contemplation of the National Labor Relations Act is the lifting of obstructions to commerce caused by labor disputes arising out of a denial to employes of the right to bargain collectively.

IV

The Act Contains No Unconstitutional Delegation of Power

It has been urged that the National Labor Relations Act is invalid because its terms embody an unconstitutional grant of legislative or judicial power to the Board. Such an argument is not well founded in view of the decisions of this Court, which has recently *(Panama Refining Co., et al.* v. *Ryan, et al.*, 293 U. S. 388 at page 421 *et seq.)* reviewed at length the limitations upon the power of Congress to lay

* 49 Stat. 1008; 15 U. S. C., ch. 17.

down policies and establish standards, leaving to an administrative authority the duty of "making subordinate rules within the prescribed limits and the determination of facts to which the policy, as declared by the legislation, is to apply". In respect to the case at bar the argument has been answered in the decisions of this Court having to do with laws similar to the National Labor Relations Act. *Federal Radio Commission* v. *Nelson Bros. B. & M. Co., supra; Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194; *Humphrey's Ex'r.* v. *United States*, 295 U. S. 602; *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307.

CONCLUSION

It is respectfully submitted that the decree of the court below, affirming and enforcing the order of the Board, should here be affirmed.

CHARLTON OGBURN,
Counsel for Amici Curiae.

ARTHUR E. REYMAN,
Of Counsel.